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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 1864/2009

Views adopted by the Committee at its 110th session (10–28 March 2014)

Submitted by:	Vladimir Kirsanov (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communications:	22 November 2008 (initial submissions)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 25 February 2009 (not issued in document form)
Date of adoption of Views:	20 March 2014
Subject matter:	Denial of authorization to organize a peaceful meeting
Substantive issues:	Right of peaceful assembly; permissible restrictions
Procedural issue:	Exhaustion of domestic remedies
Article of the Covenant:	21
Articles of the Optional Protocol:	5, para. 2 (b)

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political rights (110th session)

concerning

Communication No. 1864/2009*

Submitted by:	Vladimir Kirsanov (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communications:	22 November 2008 (initial submissions)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 20 March 2014,

Having concluded its consideration of communication No. 1864/2009, submitted to the Human Rights Committee by Vladimir Kirsanov under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication is Vladimir Kirsanov, a Belarusian national, born in 1937. He claims that he is the victim of a violation by Belarus of his rights under article 21 of the International Covenant on Civil and Political Rights (hereinafter "the Covenant"). The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented.

The facts as presented by the author

2.1 On 14 January 2008, the author sought authorization to hold a stationary demonstration (a picket), on 30 January 2008, with the aim of attracting public attention to

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Víctor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.
The text of an individual opinion by Committee members Mr. Fabián Salvioli and Mr. Víctor Rodríguez-Rescia is appended to the present Views.

the State party's policy against opposition political parties and grass-roots movements and also to protest against the State party's attempt to dismantle the Belarus Communist Party. The author was a member of the Belarus Communist Party at the time of the events. On 22 January 2008, the Zhlobinsky District Executive Committee of the Gomel Region ("the Executive Committee") denied authorization to him on the ground that there was no reason to hold the event, as the Supreme Court had stayed the activities of the Belarus Communist Party for six months, by a decision of 2 August 2007.

2.2 The author complained to the Zhlobinsky District Court ("the District Court") about the Executive Committee's refusal. On 3 March 2008, the District Court dismissed his complaint, indicating that the stay of the Communist Party's activities was a sufficient ground to limit his right to hold a peaceful assembly. On 10 April 2008, the Gomel Regional Court upheld the decision of 3 March 2008 on appeal and it became final.[1]

2.3 The author claims that he has exhausted all available domestic remedies. He also argues that, although he does not consider supervisory review proceedings to be an effective remedy, he requested the Gomel Regional Court and the Supreme Court to initiate such proceedings. On 9 July and 5 November 2008, the Chair of the Gomel Regional Court and the Chair of the Supreme Court, respectively, rejected his requests.

The complaint

3.1 The author claims that there has been a violation of his right of peaceful assembly, as guaranteed under article 21 of the Covenant. His rights were restricted on the ground that the activities of the Belarus Communist Party, of which he was a member, had been stayed for six months. The domestic courts should have established whether such a restriction was in conformity with the law. He argues that the national authorities, including the domestic courts, did not attempt to justify the restriction or provide arguments as to its necessity in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

3.2 The author maintains that the courts failed to assess the decision of the Executive Committee in the light of the provisions of the Covenant. Pursuant to articles 26 and 27 of the Vienna Convention on the Law of Treaties of 1969, Belarus is bound by the Covenant, should implement it in good faith and may not invoke the provisions of its internal law as justification for its failure to implement the Covenant. According to article 15 of the Belarusian Law on International Treaties, universally recognized principles of international law and provisions of international treaties in force in respect of Belarus form an integral part of domestic law. According to article 20 of the Universal Declaration of Human Rights, everyone has the right to freedom of peaceful assembly and association. The right of peaceful assembly is enshrined in article 21 of the Covenant and can only be restricted in respect of one of the legitimate aims contained therein. The author claims that, by

[1] According to the Gomel Regional Court's decision of 10 April 2008, "the author's intention to hold a picket on an invented problem (*надуманная проблема*) would lead to a breach of the rights of others to receive reliable information", as protected under article 34 of the Constitution. The Regional Court further indicates that the author's argument regarding the alleged unlawfulness of the decision to deny authorization is unsubstantiated, as article 10 of the Law on Mass Events does not contain an exhaustive list of grounds for denying authorization; and article 6 requires a range of circumstances to be considered, in particular those having bearing on the provision of public safety. The District Court complied with the requirements of the law. The Regional Court has taken note of the author's argument that he was acting in his own name rather than on behalf of any political party. The Regional Court has also taken note of the Supreme Court's decision of 2 August 2007, whereby the activities of the Belarus Communist Party were stayed for six months due to the party's failure to comply with the law and its own statute.

restricting his right of peaceful assembly on a ground other than one of those specified in article 21 of the Covenant, the State party has failed to honour its international obligations.

State party's observations on admissibility

4.1 On 8 May 2009, the State party challenged the admissibility of the communication, arguing that the author had failed to exhaust all available domestic remedies and that there was no reason to believe that the application of those remedies would have been unavailable or ineffective. The author had not asked the Prosecutor's Office or the Chair of the Supreme Court to initiate supervisory review proceedings in accordance with article 439 of the Code of Civil Procedure. The State party submits that the author's statement that his requests for supervisory review were dismissed on 9 July and 5 November 2008 does not correspond to the facts.

4.2 Further, the State party submits that the author's allegation that supervisory review proceedings do not constitute an effective remedy is a subjective, personal opinion, which is also inconsistent with the facts. The State party refers to statistics according to which, in 2007, 733 administrative cases were examined by the Chair of the Supreme Court, a supervisory instance, which quashed or altered 179, including 63 submitted through the Prosecutor's Office. In 2008, the Chair of the Supreme Court examined 1,071 administrative cases and quashed or altered 317, including 146 submitted through the Prosecutor's Office. Thus, in 2007 and 2008 respectively, the Chair of the Supreme Court quashed or altered 24.4 per cent and 29.6 per cent of the administrative cases that were examined.

Author's comments on the State party's observations on admissibility

5.1 On 7 June 2009, the author reiterated that he had not requested the Prosecutor's Office to initiate supervisory review proceedings, as such a request would not lead to a re-examination of the case, the initiation of supervisory review proceedings being dependent on the discretionary power of a few public officials. In addition, making such a request involved payment of a fee. He notes that the Committee has previously established that in States parties where the initiation of supervisory review proceedings is dependent on the discretionary power of a few public officials, such the Prosecutor General or the Chair of the Supreme Court, the remedies to be exhausted are limited to a cassation appeal. The author reiterates that he requested the Chair of the Supreme Court to initiate a supervisory review. On 5 November 2008, a Deputy Chair of the Supreme Court replied to his request, a fact which has not been disputed by the State party.

5.2 The author further notes, with reference to the statistics provided by the State party, that those data relate to administrative cases and therefore have no bearing on his civil case, which is regulated by the provisions of the Code of Civil Procedure.

State party's observations on the merits

6.1 On 30 July 2009, the State party submitted its observations on the merits of the case. It reiterates the facts of the case and states that the District Court had established that the aim of the picket announced by the author was inconsistent with the circumstances, as no decision had been taken with a view to banning political parties, in particular the Belarus Communist Party. According to the preamble to the Law on Mass Events of 30 December 1997, "freedom of mass events not violating the legal order and rights of other citizens of the Republic of Belarus is guaranteed by the State". According to article 34 of the Constitution, "citizens shall be guaranteed the right to receive reliable information on the activities of State bodies and public associations". The author was denied authorization to hold the picket as it concerned an invented problem *(надуманная проблема)*, thereby contravening the constitutional right of citizens to receive reliable information.

6.2 The State party further submits that the organization and conduct of mass events is governed by the Law on Mass Events of 30 December 1997. The law is aimed at creating the conditions for the realization of constitutional rights and freedoms of citizens and the protection of public order and public safety when such events are held in public spaces. According to the law, "freedom of mass activities not violating the legal order and rights of other citizens of the Republic of Belarus is guaranteed by the State".

6.3 The right of peaceful assembly is enshrined in article 21 of the Covenant. No restrictions can be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Belarus has ratified the Covenant and incorporated its provisions, including articles 19 and 21, into domestic law. In particular, the right to freedom of thought and belief and the right to freedom of expression are guaranteed under article 33 of the Constitution. Article 35 of the Constitution guarantees the right to hold assemblies, rallies, street processions, demonstrations and pickets, provided that they do not violate law and order or breach the rights of other citizens. In addition, under article 23 of the Constitution, no restrictions may be placed on the rights and freedoms of citizens other than those imposed in conformity with the law, in the interests of national security, public safety, the protection of public health or morals or the protection of the rights and freedoms of others.

Author's comments on the State party's observations on the merits

7.1 On 12 February 2010, the author challenged the State party's argument that authorization to hold a peaceful assembly had been denied to him in conformity with the law as the authorities considered that the picket in question concerned an invented problem. In this regard, he points out that the right protected under article 21 of the Covenant can be restricted only under the requirements listed therein. He claims that the national legislation on the organization and conduct of mass events does not contain the notion of "invented problem". The author states that the restriction of his right of peaceful assembly on such a ground is therefore neither in accordance with the law nor necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

7.2 The author adds that he has exhausted all available domestic remedies and that he is the victim of a violation of article 21 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

8.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee takes note of the State party's contention that the author could have requested the Prosecutor's Office, as well as the Chair of the Supreme Court, to initiate a supervisory review of the decisions of the District Court and the Regional Court, and of the State party's reference to a number of administrative cases where supervisory review proceedings were successfully brought. It also takes note of the author's explanation that his requests to initiate supervisory review proceedings were unsuccessful, that such

remedies were neither effective nor accessible, and that the data provided by the State party are irrelevant to the circumstances of his case. The Committee recalls its previous jurisprudence, according to which the State party's supervisory review procedures against court decisions which have entered into force do not constitute a remedy which has to be exhausted for purposes of article 5, paragraph 2 (b), of the Optional Protocol.[2] It also notes that the State party has not shown whether and, if so, in exactly how many cases, supervisory review procedures have been successfully brought in cases concerning the right of peaceful assembly. In the circumstances, the Committee considers that it is not precluded under article 5, paragraph 2 (b), of the Optional Protocol from examining the communication.

8.4 The Committee considers that the author has sufficiently substantiated his claim under article 21 of the Covenant for purposes of admissibility. Accordingly, it declares the communication admissible and proceeds to its examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the communication in the light of all the information made available to it by the parties, as provided under article 5, paragraph 1, of the Optional Protocol.

9.2. The issue before the Committee is whether the denial of the required authorization to hold a picket as planned by the author constitutes a violation of his rights under article 21 of the Covenant.

9.3 The Committee recalls that the right of peaceful assembly, as guaranteed under article 21 of the Covenant, is a fundamental human right, which is essential for public expression of one's views and opinions and indispensable in a democratic society.[3] This right entails the opportunity to organize and participate in a peaceful assembly, including a stationary assembly in a public location (a picket). It recalls that no restrictions on this right are permissible unless they are (a) imposed in conformity with the law and (b) necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

9.4 The Committee notes that, given that the State party has established a procedure for organizing mass events but has denied the author's application for authorization of the planned picket, it has set a restriction on the exercise of the author's right of peaceful assembly. The issue before the Committee in the present case is therefore whether this restriction is justified under the criteria set out in the second sentence of article 21 of the Covenant. The Committee recalls that, if a State party imposes a restriction under article 21, it is up to that State party to demonstrate that the restriction in question was necessary for the aims set out in that provision.

9.5 The Committee takes note of the State party's argument that the author was denied authorization to hold a picket in relation to the alleged ban on political parties, which the local authorities considered to be an invented problem. It also notes the State party's explanation that no decision to ban political parties has been taken and that therefore the

[2] See, for example, communication No. 1785/2008, *Olechkevitch* v. *Belarus*, Views adopted on 18 March 2013, para. 7.3; communication No. 1784/2008, *Schumilin* v. *Belarus*, Views adopted on 23 July 2012, para. 8.3; communication No. 1841/2008, *P.L.* v. *Belarus*, Decision of inadmissibility 26 July 2011, para. 6.2.

[3] See, for example, communication No. 1948/2010, *Turchenyak and others* v. *Belarus*, Views adopted on 24 July 2013, para. 7.4.

subject of the author's picket conflicted with the right of citizens to receive reliable information, as protected under article 34 of the Constitution and by the Law on Mass Events of 30 December 1997. The Committee also notes the State party's statement that the above-mentioned law is aimed at creating the conditions for the realization of citizens' constitutional rights and freedoms and for the protection of public safety and public order when such events are held in public spaces. It further notes the author's contention that the national legislation on mass events does not spell out the notion of "invented problem" as a ground for denying authorization to hold a mass event.

9.6 The Committee is called upon to establish whether the restriction imposed on the exercise of the author's right of peaceful assembly amounts to a violation of article 21 of the Covenant. The Committee notes that authorization for the author's planned picket was denied by the decision of the Zhlobinsky District Executive Committee of the Gomel Region, which was upheld by the domestic courts.

9.7 The Committee recalls that the rejection of a person's right to organize a public assembly on the basis of its content is one of the most serious interferences with the freedom of peaceful assembly.[4] Furthermore, when a State party imposes restrictions with the aim of reconciling an individual's right and the aforementioned interests of general concern, it should be guided by the objective of facilitating that right, rather than seeking unnecessary or disproportionate limitations to it.[5] Any restriction on the exercise of the right of peaceful assembly must conform to the strict tests of necessity and proportionality.

9.8 In the present case, the Committee observes that the State party has failed to demonstrate that the denial of authorization to hold a picket, even if imposed in conformity with the law, was necessary for any of the legitimate purposes set out in article 21 of the Covenant. In particular, the State party has not specified why conducting the picket on the subject concerned would pose a threat to public safety and public order, as claimed by the State party. As to the alleged need to protect the rights of others to receive reliable information, the State party has not demonstrated how that was consistent with the legitimate purposes contained in article 21 of the Covenant and, in particular, why it was necessary in a democratic society, the cornerstone of which is free dissemination of information and ideas, including information and ideas contested by the Government or the majority of the population.[6] Furthermore, the State party has not shown that those purposes could only be achieved by the denial of the picket proposed by the author. The Committee concludes that in the absence of any other pertinent explanations from the State party, the facts as submitted reveal a violation, by the State party, of the author's rights under article 21 of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated the author's right under article 21 of the Covenant.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the author with an effective remedy, including adequate

[4] Also see, for example, communication no. 1873/2009, *Alekseev* v. *the Russian Federation*, Views adopted on 25 October 2013, para. 9.6.

[5] See, for example, communication No. 1948/2010, *Turchenyak and others* v. *Belarus*, Views adopted on 24 July 2013, para. 7.4

[6] See, mutatis mutandis, communication No. 1274/2004, *Korneenko* v. *Belarus*, Views adopted on 31 October 2006, para. 7.3, which reads: "The reference to the notion of 'democratic society' in the context of article 22 indicates, in the Committee's opinion, that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society."

compensation. The State party is also under an obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them widely disseminated in Belarusian and Russian in the State party.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Appendix

Individual opinion of Committee members Mr. Fabián Salvioli and Mr. Víctor Rodríguez-Rescia (concurring)

We agree with the Committee's decision in communication No. 1864/2009, *Kirsanov* v. *Belarus*, in which it held the State internationally responsible for a violation of article 21 of the International Covenant on Civil and Political Rights (on the right of peaceful assembly). However, we believe that the Committee should also have found a violation by the State of article 19 of the Covenant in this case. The facts show that the State's prohibition of a peaceful demonstration on the ground that there was "no reason" to hold the event constitutes a serious violation of the right to freedom of expression.

The purpose of the demonstration, as the author clearly stated, was to attract public attention to the State party's policy against opposition political parties and grass-roots movements and to protest against what was seen as an attempt by the State party to dismantle the Belarus Communist Party.[7] There is no doubt that in the present case the author's expression of his opinion was the most important consideration, and peaceful assembly was the means chosen to exercise that right. The violation was therefore of both rights, but especially of the right to freedom of expression.

In the light of the facts, the Committee should simply apply the law, that is to say, the Covenant. The arguments put forward by the parties serve as a point of reference that the Committee may take into consideration when assessing the case, but they should not in any way curtail the Committee's authority to judge the case in the way it considers will best fulfil the object and purpose of the Covenant.

As long as the Committee persists in restricting its own capacity to respond, it will continue to adopt inconsistent decisions. At the same session at which these Views were adopted, the Committee reached a different conclusion in another case involving the same State party and similar events.[8]

As we have previously stated in individual opinions concerning other communications, the Committee sometimes applies articles of the Covenant that have not been invoked by the parties in their submissions.[9] On other occasions – such as this – it does not. There is no logic to this approach.

Putting an end to such inconsistencies would improve the Committee's practice, better implement the law, properly fulfil the object and purpose of the Covenant and give better guidance to States in providing due reparation in cases in which they are found to be internationally responsible.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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[7] See the Committee's Views, para. 2.1.

[8] *Youbko* v. *Belarus*, communication No. 1903/2009. See in particular the Committee's considerations in paras. 9.2 to 9.6.

[9] *Sedhai* v. *Nepal*, communication No. 1865/2009, individual opinion of Committee members Mr. Fabián Salvioli and Mr. Víctor Rodríguez-Rescia, para. 6. Footnote 3 of the joint opinion provides 10 examples of Views in which the Committee applied articles not invoked by the parties.